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IN THE

Supreme Court of the United States

October Term, 1963

No. 826

LEROY HENRY, and 64 others,

Petitioners,

—v.—

CITY OF ROCK HILL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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IN THE

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No. ———

LEROY HENRY, and 64 others,

Petitioners,

—v.—

CITY OF ROCK HILL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina, entered in the above-entitled case on November 15, 1963.

Citations to Opinions Below

The opinion of the Supreme Court of South Carolina on remand from this Court is unreported and appears in the appendix, *infra*, pp. 7a-11a.

The original opinion of the Supreme Court of South Carolina which was dated December 7, 1962 and was vacated and remanded by this Court, *Henry* v. *City of Rock Hill*, 375 U. S. 6, is reported at 241 S. C. 427, 128 S. E. 2d 775 and appears in the appendix, *infra*, pp. 4a-6a. The order of the York County Court is unreported and is set forth in the appendix hereto, *infra*, pp. 1a-3a.

Jurisdiction

The judgment of the Supreme Court of South Carolina of which review is sought was entered on November 15, 1963, *infra*, pp. 7a-11a.

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1257(3), petitioners having asserted below and claiming here, deprivation of rights secured by the Constitution of the United States.

Questions Presented

Whether petitioners were denied due process of law secured by the Fourteenth Amendment:

1. When arrested and convicted under South Carolina's vague common law concept of breach of the peace while engaging in peaceful and orderly speech and assembly on a record revealing far less likelihood of public disturbance than *Edwards* v. *South Carolina*, 372 U. S. 229, and *Fields* v. *South Carolina*, 375 U. S. 44.

2. When convicted on a record barren of any evidence of the essential elements of the crime?

Constitutional Provision Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Statement

On October 14, 1963 this Court vacated the judgment of the Supreme Court of South Carolina, 375 U. S. 6, and directed that, "the case is remanded to the Supreme Court of South Carolina for further consideration in light of *Edwards* v. *South Carolina*, 372 U. S. 229." On November 15, 1963, the Supreme Court of South Carolina concluded that "there is nothing in the *Edwards* case to require a reversal of instant case" (sic), *infra*, p. 11a, and reinstated its judgment of December 7, 1962.

Petitioners are 65 Negro students who were arrested in two groups on March 15, 1960 in front of the City Hall of Rock Hill, South Carolina while engaging in a lunch hour protest against racial segregation, and charged with common law breach of the peace. The warrant (R. 2) stated that the petitioners "did willfully and unlawfully commit a breach of the peace by assembling with others in a large group upon the public streets, singing in a loud, boisterous, and tumultuous manner and refusing to disperse upon order of a police officer contrary to the peace and dignity of the State of South Carolina, and in violation of the ordinances of the City of Rock Hill."

Petitioner Leroy Henry was tried and convicted in the Recorder's Court of the City of Rock Hill on March 24, 1960. The other petitioners appeared in the same court in several groups on March 31, 1960, April 7, 14, 21 and 28, 1960, and May 5 and 26, 1960 (R. 1). Upon the appearance of each group it was stipulated that the testimony in the trial of Henry was applicable to and incorporated by reference into the remaining trials (R. 1, 192). All of the petitioners were found guilty and sentenced to pay fines of thirty-five to forty-five dollars or to serve thirty (30) days in prison (R. 1).

The cases were appealed to the York County Court where, on December 29, 1961, the Honorable George T. Gregory, Jr. issued an Order affirming the convictions (R. 193). On December 7, 1962 the Supreme Court of South Carolina also affirmed the convictions, *infra*, pp. 4a-6a.

A petition for writ of certiorari was filed with this Court and, on October 14, 1963, the case was remanded for reconsideration in the light of *Edwards* v. *South Carolina*, *supra*. On November 15, 1963 the Supreme Court of South Carolina found the *Edwards* case inapplicable here and reaffirmed the convictions, *infra*, pp. 7a-11a. The present petition seeks review of that decision.

A. The First Group

On March 15, 1960 around 1:00 o'clock p.m. (R. 40, 118) sixty Negro students engaged in an orderly protest against racial segregation in front of the City Hall in Rock Hill, South Carolina (R. 115, 150, 151, 192). The group sang several patriotic and religious songs—the National Anthem, My Country 'Tis of Thee, God Bless America, What a Friend We Have in Jesus and America the Beautiful (R. 20, 91, 113), and carried signs (R. 44). No ordinance prohibited such activity in front of City Hall (R. 83). After approximately fifteen minutes, police officers asked the leader of the group to tell the students to disperse (R. 95). When they did not, he arrested them (R. 95).

Although one police officer testified that he arrested petitioners "in view of the public peace," and because there was immediate danger to the public peace (R. 92) there is no evidence whatsoever that the petitioners or the onlookers threatened the public peace. Petitioners were peaceful, orderly, courteous, and polite (R. 63, 109), and no complaint about their conduct was made (R. 64, 65). The white onlookers, who numbered only one hundred fifty "at the greatest gathering" (R. 66), "were not doing anything but

standing" (R. 69) and "were just standing there to see what was going to happen" (R. 71). Five or six policemen were at the scene and no more were called or needed to control the situation (R. 108, 109).

The State attempted to prove that the singing was too loud (R. 20, 91). Yet no complaint about this was made (R. 64, 65). A single car horn could be heard distinctly above the singing (R. 125), which seemingly grew louder to overcome the sound of the horn (R. 92, 107). Moreover, four of the petitioners' witnesses testified that the singing was low and moderate (R. 147, 165, 170, 177).

Testimony that work was disrupted in City Hall was based wholly on the fact that some employees were observing the protest (R. 41, 111).

Both pedestrian and vehicular traffic continued undisturbed. The petitioners were on the sidewalk near the curb and did not prevent anyone from passing (R. 20, 41, 55, 57, 126). Nor did the white onlookers on the opposite side of the street block cars or pedestrians (R. 66). Although some of the onlookers did spill out into the streets, they were moved back with no trouble (R. 66, 67, 68). Traffic was cut out of Hampton Street, which is located in front of City Hall, only around the time the arrests were made (R. 67), presumably to facilitate the arrests. The only contradiction to this testimony of the police officers at the scene came from a man who was inside the building, and who could not tell how or by whom traffic was slowed (R. 120). He did testify, however, that the petitioners did not block traffic (R. 126).

B. The Second Group

The second group consisted of five students who apparently arrived after the others had been arrested. They acted in much the same manner as the first group, singing

patriotic and religious songs (R. 43, 96), but apparently for a shorter period of time than the first group. The police also asked them to leave and when they refused they were arrested. At this time the street was fairly clear of citizens (R. 96).

How the Federal Questions Were Raised and Decided Below

Before the commencement of the trial petitioner Leroy Henry made a motion to quash the information and dismiss the warrants on the ground that they were vague, indefinite, and uncertain (R. 6, 7). The motion was overruled (R. 8, 18, 19).

At the close of the prosecution's case petitioner moved to dismiss the warrants on the ground that the Fourteenth Amendment to the Constitution of the United States would be violated by a conviction based on the exercise of free speech and assembly and where there was no evidence of breach of the peace (R. 141). The motion was overruled (R. 143).

At the close of the petitioner's case, the motion to dismiss was renewed on grounds previously given (R. 188), and after the verdict a motion for a new trial was made on the same grounds (R. 189). Both motions were overruled (R. 189).

In affirming the convictions, the York County Court relied on *Edwards* v. *South Carolina* (R. 194), 239 S. C. 339, 123 S. E. 2d 247, reversed 372 U. S. 229 (at that time *Edwards* had not yet been reversed), and stated that all the various legal objections were overruled (R. 195). The South Carolina Supreme Court also affirmed the convictions, holding that there was ample evidence to show that the police acted in good faith, *infra*, p. 6a.

On October 14, 1963 this Court vacated the judgment of the Supreme Court of South Carolina and remanded the case "for further consideration in light of *Edwards* v. *South Carolina*," 375 U. S. 6. Upon reconsideration in the light of *Edwards*, the Supreme Court of South Carolina found that the facts here were "more aggravated than those in the *Edwards* case" and adhered to its former decision, *infra*, p. 11a.

Reasons for Granting the Writ

I.

Petitioners Were Denied Due Process of Law Secured by the Fourteenth Amendment by Their Convictions for South Carolina's Vague Crime of Common Law Breach of the Peace While Exercising Rights of Free Speech and Assembly to Protest Racial Segregation.

Upon reconsideration of these cases in the light of *Edwards* v. *South Carolina*, 372 U. S. 229, pursuant to a mandate of this Court, the South Carolina Supreme Court refused to apply the principles of *Edwards* and adhered to its prior judgment, affirming the convictions, *infra*, pp. 7a-11a. The same procedure occurred in *Fields* v. *South Carolina*, 375 U. S. 44, which involved a protest by Negro students against racial segregation in Orangeburg, South Carolina. This Court reversed the decision of the South Carolina Supreme Court upholding the convictions and remanded the cases for reconsideration in light of *Edwards*. After the Supreme Court of South Carolina had reaffirmed the convictions, this Court reversed.

In *Edwards*, as here, Negro students were convicted of common law breach of the peace while engaging in a protest against racial segregation, a protest which occurred

on the South Carolina State House grounds. In reversing, this Court held that the students were exercising First Amendment freedoms "in their most pristine and classic form," 372 U. S. at 235. It reaffirmed the principle that such freedoms are protected by the Fourteenth Amendment from invasion by the States, 372 U. S. at 235, *Fields* v. *South Carolina*, 375 U. S. 44; *Cantwell* v. *Connecticut*, 310 U. S. 296; *DeJonge* v. *Oregon*, 299 U. S. 353; *Stromberg* v. *California*, 283 U. S. 359; *Whitney* v. *California*, 274 U. S. 357; *Gitlow* v. *New York*, 268 U. S. 652; and found no compelling state interest which could justify abridgment. Refusing to apply those principles to this case and with no discussion whatsoever of the differences in the two cases, the South Carolina Supreme Court simply held that the facts here were "more aggravated" than those in *Edwards*, *infra*, p. 11a.

Any comparison between *Edwards* and this case, however, reveals that the convictions here were even more unjustifiable than those in *Edwards*. One hundred eighty-seven persons gathered at the State House in *Edwards*, sixty were present in the first group here, and only five in the second (R. 1, 43). The protest in *Edwards* lasted some forty-five minutes to an hour, while the first group here demonstrated fifteen to thirty minutes, and the second for a shorter period (R. 44, 95). In *Edwards* there was much more than the singing of patriotic and religious songs and carrying of placards which occurred here (R. 20, 44, 91, 113), for the students there marched, clapped hands, stamped their feet, and listened to a "religious harangue."

The crowd of onlookers here was much smaller and more orderly than that in *Edwards*. There the onlookers numbered two to three hundred while here there were one hundred and fifty "at the greatest gathering" when the first group was singing (R. 66). While the second group pro-

tested, "the street was fairly clear as far as citizens were concerned . . ." (R. 96). There was testimony in *Edwards* by the city manager that "possible troublemakers" were present in the crowd but similar evidence is lacking here (R. 71). Police officers were at the scene and completely in control of the situation in both cases (R. 108, 109).

No disruption of traffic can be found in either case. Even the slowing down of traffic which occurred in *Edwards* is missing here.

As in *Edwards*, there was no compelling state interest here which justified a limitation on First Amendment freedoms. Although the arresting officer testified that he arrested petitioner because of a threat to the public peace, there was no evidence of disorder either on the part of the petitioners or the onlookers (R. 63, 7). This case is, therefore, unlike *Feiner* v. *New York*, 340 U. S. 315, 317, 318 where a "pushing, milling and shoving crowd" was "moving forward." Nor could traffic control be used as a basis for suppressing freedom of expression, particularly where, as here, there was no disruption of traffic (R. 20, 41, 55, 57, 66-68, 126). *Edwards* v. *South Carolina*, *supra*, at 236; *Cantwell* v. *Connecticut*, 310 U. S. at 307, 308.

Moreover, if singing in front of City Hall and refusing to disperse upon the command of a police officer are enough to arrest and convict petitioners, South Carolina's crime of common law breach of the peace is subject to the vice of vagueness. No ordinance or statute prevented petitioners from singing in front of City Hall (R. 83). Thus, this Court is not asked to review "criminal convictions resulting from the evenhanded application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed." *Edwards* v. *South Carolina*, *supra* at 236.

This Court has already rejected South Carolina's definition of breach of peace as too broad to be used to suppress conduct like that here. Breach of peace has been defined by the Supreme Court of South Carolina in the following manner (*Edwards, supra* at 234):

> "'In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence . . . , it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense . . .'"

Such an all-inclusive definition cannot be used to suppress speech. It makes no difference that the opinions being expressed are opposed by a majority of persons in the community. *Edwards, supra* at 236; *Terminiello* v. *Chicago*, 337 U. S. 1, 4.

Certiorari should be granted because the judgment of the Supreme Court of South Carolina is in direct conflict with this Court's decision in *Edwards*, *Fields* and other cases which have long adhered to the principle that freedom of expression cannot arbitrarily be suppressed, particularly by a crime so vaguely defined that it is repugnant to the Fourteenth Amendment.

II.

Since the Convictions of the Petitioners for Breach of Peace Rest on No Evidence of Disorder or Violence, Actual or Threatened, They Violate the Due Process Clause of the Fourteenth Amendment.

Even under South Carolina's amorphous definition of breach of the peace there is no evidence to support the petitioners' convictions. They did nothing except sing and carry placards (R. 20, 44, 91, 113) and no ordinance prevented such activity (R. 83). The testimony of the police was that petitioners were orderly, courteous, and polite (R. 63). Nor did the onlookers do anything which suggested that they were hostile to the petitioners. They made no complaints (R. 64, 65) and "were just standing there to see what was going to happen" (R. 71). Moreover, none was arrested (R. 68, 71, 109, 110). The situation was so well in hand that only five or six policemen were at the scene (R. 108, 109).

There was no disruption of traffic since it was able to move freely both on the sidewalk and in the streets (R. 41, 55, 57, 66-68, 126). One street was blocked off only around the time the arrests were made (R. 67), presumably to facilitate them. The one person who contradicted this evidence was inside the building and could not tell how or by whom traffic was blocked (R. 120). He did say, however, that the petitioners did not block traffic (R. 126).

One basis for a conviction that has been urged is the testimony of police officers and a city employee who helped take petitioners to jail that the singing was loud and work was disrupted (R. 20, 21, 62, 91, 119, 125). Yet the "evidence" that work was disrupted consisted only in the fact that people were observing the demonstration (R. 41, 111).

The singing was not so loud that a single car horn could not be heard distinctly above it (R. 125). Four persons testified that the singing was soft and sweet (R. 147, 165, 170, 177). No complaints were made (R. 64, 65).

Certiorari should be granted, therefore, and the decision below reversed for the additional reason that due process of law secured by the Fourteenth Amendment was denied because there was no evidence to sustain the convictions. *Thompson* v. *Louisville*, 362 U. S. 199; *Garner* v. *Louisiana*, 368 U. S. 157; *Taylor* v. *Louisiana*, 370 U. S. 154.

CONCLUSION

Wherefore, for the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE

YORK COUNTY COURT

THE CITY OF ROCK HILL

—v.—

LEROY HENRY, *et al.*

Order

This Court now has before it for consideration a total of seventy-one cases which were heard by the Recorder's Court for the City of Rock Hill. The convictions of all defendants were in due time appealed to this Court and heard together by this Court on an agreed Transcript of Record. By occurrence and charge the cases are grouped as follows:

1. Sixty-five breach of peace charges, upon the public streets at City Hall, on March 15, 1960.

2. Three breach of peace charges, upon the public streets at Tollison-Neal Drug Store, on February 23, 1961.

3. One Trespass charge within McCrory's variety store, on April 1, 1960, before enactment of the 1960 Trespass Act (No. 743).

4. Two Trespass charges, within McCrory's variety store on June 7, 1960, after enactment of the 1960 Trespass Act.

An examination of the Transcript of Record on Appeal discloses no real distinction between the first sixty breach

of peace cases at City Hall, the next five on the same day at the same place only a short time later, and the three breach of peace cases on the public streets at Tollison-Neal Drug Store. In all of these cases it appears from the record that the public peace was endangered, that the defendants were properly forewarned by a police officer to cease and desist from further demonstrations at that time and place, and move on, which they failed and refused to do, despite allowance of ample time within which to have complied with the order, and that thereafter they were arrested and charged with breach of peace as continuance of their activities under the circumstances then existing, as shown by the record, constituted open defiance of proper and reasonable orders of a police officer and tended with sufficient directness to breach the public peace.

The offense charged in each of the sixty-eight breach of peace cases is clearly made out under the facts shown by the Transcript of Record and the law of force in this state, particularly as the law shown by the recent decision of the South Carolina Supreme Court in the case of *State* v. *Edwards et al.*, Opinion No. 17853, filed December 5, 1961.

In like manner this Court finds no distinguishing features between the one trespass case, which occurred at one time and place and the two later trespass cases at the same place. In all three cases each defendant was asked to leave the premises by the Manager of the store, this occurred in the presence of a City police officer, who then himself requested each defendant to leave and explained that arrest would follow upon failure to leave. After each defendant failed to leave the private premises involved, following allowance of a reasonable opportunity after request so to do, first by the Manager and then by the police officer, each defendant was arrested and charged with trespass. Here again, under the facts disclosed in the record and the law of force in this state, the charge of trespass

is properly made out as to each defendant. See *City of Greenville* v. *Peterson et al.*, S. C. Supreme Court Opinion No. 17845, filed November 10, 1961 and *City of Charleston* v. *Mitchell et al.*, S. C. Supreme Court Opinion No. 17856, filed December 13, 1961.

A number of specific legal questions were raised by the Defendants, including particularly a question as to adequacy and sufficient (sic) of the warrants and whether or not the Defendants were properly advised of the charges pending against them. An examination of the warrants discloses that in each case the facts constituting the offense charged were stated with reasonable and sufficient particularity. It is the opinion of this Court that the various legal objections raised in the court below, which are not set forth in detail herein, were properly overruled. See *State* v. *Randolph et al.*, 239 S. C. 79, 121 S. E. (2d) 349, filed August 23, 1961, other authorities cited herein, and other applicable decisions of our Courts referred to in the cited authorities.

Accordingly, it is hereby *ordered and decreed* that the convictions by the Recorder's Court of the City of Rock Hill in all of the seventy-one cases under appeal are hereby affirmed, and each of the cases is remanded for execution of sentence as originally imposed.

This Court takes note, from published reports, of the untimely death of the defendant, Rev. C. A. Ivory, since hearing of the appeals herein and before rendering judgment thereon.

All of which is duly ordered.

GEORGE T. GREGORY, JR.,
Residing Judge,
Sixth Judicial Circuit.

Chester, S. C.
December 29, 1961.

Original Opinion of the Supreme Court of South Carolina

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE CITY OF ROCK HILL,

Respondent,

—v.—

LEROY HENRY, *et al.*,

Appellants.

December 7, 1962

Appeal from York County. GEORGE T. GREGORY, JR., *Residing Judge, Sixth Judicial Circuit.* AFFIRMED.

TAYLOR, *C.J.*: Appellants here are sixty-five Negroes who were arrested March 15, 1960, and convicted by the City of Rock Hill, South Carolina, of the common law offense of breach of peace.

The record reveals that on the day in question all of those arrested were engaged in singing patriotic and religious songs in a loud and boisterous manner in the city of Rock Hill; that the crowd assumed such proportions that it spread from the sidewalk into the street; that tension was present in the community resulting from previous demonstrations and threats of bombings had been made; that the singing was done in such loud and boisterous manner that work in the City Hall was completely disrupted. This demonstration had been going on from 25 to 30 minutes before they were forewarned by police officers to desist from further demonstrations. They failed and refused to comply with the request of the police and were arrested and charged with breach of peace.

"In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence * * *, it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense * * *.

"By 'peace', as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society." 8 Am. Jur. 834, Section 3; *State* v. *Edwards*, 239 S. C. 339, 123 S. E. (2d) 247. See also *State* v. *Brown*, —— S. C. ——, 126 S. E. (2d) 1; *City of Sumter* v. *McAllister*, —— S. C. ——, 128 S. E. (2d) 419, filed November 28, 1962; *City of Sumter* v. *Lewis*, —— S. C. ——, 128 S. E. (2d) 684, filed December 1, 1962.

Appellants in their brief contend principally that they were discriminated against because they were Negroes; second, that there was no breach of peace in that what they were doing was not within itself unlawful.

Appellants were not convicted under a statute designed to perpetuate segregation but were convicted of the common law offense of breach of peace, and this applies to any person irrespective of race. The singing of patriotic songs and religious hymns is, of course, not unlawful if done in a lawful manner, but even such praiseworthy acts may be done at a time and place and in such manner as to be unjustifiable and unlawful resulting in a breach of

the peace. There is ample evidence here to support the conclusion that the police acted in good faith to maintain the public peace, to assure the availability of the streets for their primary purpose of usage by the public, and to maintain order in the community.

For the foregoing reasons, we are of opinion that all exceptions should be dismissed; and IT IS SO ORDERED. JUDGMENT AFFIRMED.

MOSS, LEWIS and BRAILSFORD, *JJ.*, concur. BUSSEY, *A.J.*, did not participate.

Opinion

(Filed November 15, 1963)

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Case No. 4911
Opinion No. 18001

CITY OF ROCK HILL,

Respondent,

—v.—

LEROY HENRY, *et al.* (nine cases),

Appellants.

APPEAL FROM YORK COUNTY
GEORGE T. GREGORY, JR., JUDGE

The convictions of the defendants of the common law crime of breach of peace in this case have been vacated by an order of the United States Supreme Court and the cause remanded to us for reconsideration in the light of its decision in the case of *James Edwards, Jr., et al., Petitioners* v. *State of South Carolina*, 372 U. S. 229. Recognizing the power and authority of the United States Supreme Court to reverse a State conviction for proper reasons or grounds based on the provisions of the Federal Constitution, we have endeavored to carry out the mandate of the United States Supreme Court and find that the light, if any, shed upon instant case by the *Edwards* case is not readily or easily discernible.

Opinion

Following the decision in the *Edwards* case, the United States Supreme Court, in a mandate similar to the one in instant case vacated the judgments in *State* v. *James Fields, et al.*, and ordered us to reconsider our judgments in those cases, in the light of *Edwards*. We then assiduously tried to analyze, in the hope of understanding, the reasoning of the majority opinion in the *Edwards* case delivered by Mr. Justice Stewart wherein he stated: "The state courts have held that the petitioners' conduct constituted a breach of the peace under state law, and we may accept their decision as binding upon us to that extent." We would like to point out that the "state law" referred to is merely the common law of England adopted in South Carolina as one of the original states.

Considering the foregoing statement alone, in connection with the result reached, one might arrive at the conclusion that the holding of the court was to the effect that a person has a right to commit the common law crime of breach of peace so long as one is engaged in the exercise of rights protected by the First Amendment to the United States Constitution. The same rights are fully protected by Article I, Section 4, of the Constitution of South Carolina.

We, however, did not arrive at so narrow a construction of the opinion of the court. After careful study and close scrutiny of the opinion, we arrived at the view that the holding of the court was simply as follows:

That wherever rights protected by the First Amendment are involved, it becomes the duty of the United States Supreme Court to review the entire record and all of the circumstances to determine for itself in each individual case, depending on the facts and circumstances of the particular case, whether the First Amendment to the United States Constitution requires the United States Supreme

Court to set aside a conviction for breach of peace, such conviction being otherwise fully supported by the evidence and binding upon the United States Supreme Court.

To state our construction of the holding of the court in another way is as follows: that wherever there is involved a conflict between the power and duty of the state to maintain law, public order and peace, to prevent violence and to punish for breach of peace, on the one hand; and the assertion of constitutional rights by an individual, on the other hand, it becomes the duty of the United States Supreme Court to consider all the facts and circumstances involved in each case and, depending on the facts and circumstances of the particular case, determine which right shall prevail.

Whether our construction of the opinion was correct or not, it seems clear that the United States Supreme Court, after conceding that the decision of this court to the effect that the conduct of the defendants constituted the common law crime of breach of peace was binding upon it, then proceeded to review the evidence and concluded, on the basis of such facts as were recited in the opinion, that the convictions should be set aside as violative of the rights guaranteed to the petitioners by the First Amendment. As to any matter of law, or construction of the Constitution, we saw nothing in the *Edwards* opinion which would change the law on the subject as laid down in *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213.

In our view of the court's opinion in *Edwards*, we did not then and do not now regard that case as a precedent requiring that court or this court to set aside convictions, in other breach of peace cases, unless the facts be more or less parallel to the facts in the *Edwards* case, since it seems clear to us that the decision of the court in that case was based on such facts as were recited in the majority opinion.

We feel it not at all amiss to point out that additional facts, not mentioned in the majority opinion, were brought out in the dissenting opinion of Mr. Justice Clark.

In the light of our understanding of the *Edwards* case we proceeded to consider the facts in the case of *State* v. *Fields, et al.*, in comparison with the facts in the *Edwards* case. As the record, if considered, will show quite clearly, the conduct of the various defendants in the *Fields* case was much more grossly violative of the public peace, order and tranquillity than was the conduct of the defendants in *Edwards*. This we think is quite true, whether one considers the facts in *Edwards* as stated by Mr. Justice Stewart, or as stated by Mr. Justice Clark. Thus, in our view of the opinion the *Edwards* case was not a precedent for setting aside the convictions in the *Fields* case.

Accordingly, in view of the totally different facts, so much more grossly violative of the public peace, order and tranquillity, we, in the *Fields* case, reaffirmed the convictions based upon the reasoning and the identical facts reflected in our opinion in the companion case of *State* v. *Brown*, 240 S. C. 357, 126 S. E. (2d) 1.

In spite of the totally different state of facts in the *Fields* case, the United States Supreme Court has now, without any discussion of these totally different facts, without any reference to the record, and without any reference to *State* v. *Brown*, *supra*, simply reversed the convictions in very terse language. (Opinion filed October 21, 1963.)

This latter action by the United States Supreme Court is not at all in accord with our interpretation of its opinion in the *Edwards* case and at least raises grave doubt as to whether our interpretation of that opinion is correct. Nevertheless, we do not know what other interpretation to put upon it, as we are unwilling to believe that the United

States Supreme Court meant by these two decisions, that is *Edwards* and *Fields*, to hold that one has an absolute right to commit a breach of peace, provided one is engaged at the time in the exercise of a right protected by the First Amendment to the United States Constitution. If one has an absolute right to commit that crime, while so engaged, it would seem to follow that one would have the right to commit other more grievous crimes while so engaged. Since we cannot believe such to be the view of the United States Supreme Court, we approach the reconsideration of this case in the light of our original interpretation of the *Edwards* decision. We have reviewed the facts in this case, which we find more aggravated than those in the *Edwards* case, and conclude that there is nothing in the *Edwards* case to require a reversal of instant case. Therefore:

We adhere to and reinstate the judgment of this Court rendered December 7, 1962, 241 S. C. 427, 128 S. E. (2d) 775 for the reasons stated therein.

s/ C. A. Taylor, *C.J.*

s/ Joseph R. Moss, *A.J.*

s/ J. Woodrow Lewis, *A.J.*

s/ Thos. P. Bussey, *A.J.*

s/ J. M. Brailsford, *A.J.*

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